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No. 1038

IN THE

Supreme Court of the United States

October Term, 1946

POTOMAC ELECTRIC POWER COMPANY,
Petitioner,

vs.

PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA, *et al.*,
Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia

BOWEN & KELLY
929 E Street, N. W.
Washington 4, D C.

S. RUSSELL BOWEN

HUNTON, WILLIAMS, ANDERSON, GAY & MOORE
1003 Electric Building
Richmond 12, Virginia

T. JUSTIN MOORE
GEORGE D. GIBSON
JOHN W. RIELY

Attorneys for Potomac Electric Power Company

Dated February 14, 1947.

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Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia

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Potomac Electric Power Company respectfully prays that a writ of certiorari issue to review a judgment of the United States Court of Appeals for the District of Columbia. The judgment affirmed an order of the District Court of the United States for the District of Columbia, entered January 29, 1945 (R. 261), that affirmed an order of the Public Utilities Commission of the District of Columbia, entered July 22, 1944 (R. 1), reducing the Company's rates.

OPINIONS BELOW

The opinion and order of the Commission (R. 1) is reported in 55 P. U. R. (NS) 65.

The findings of the District Court (R. 262) are not reported.

The three opinions in the Court of Appeals (R. 641) are not yet reported.

JURISDICTION

The judgment of the Court of Appeals (R. 657) was entered on July 16, 1946. A petition for rehearing (R. 658), seasonably filed, was denied on December 17, 1946 (R. 669).

The jurisdiction of this Court is invoked under Par. 65 of the Law creating the Public Utilities Commission (D. C. Code 43-705, 37 Stat. 989, 49 Stat. 882), and under Section 240 of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C., § 347).

STATUTE INVOLVED

Pertinent portions of the Act creating the Public Utilities Commission (D. C. Code 43-101-1007) are copied in the Appendix.

QUESTIONS PRESENTED

1. Is the rate-making scheme in the District for changes in public utility rate levels previously established by the compromise method of the "sliding scale" to remain obscured by the differing opinions of the three judges in the court below, in lieu of respecting the clear purpose of the Congress that changes by that method are attainable only through the compromise procedure of mutual agreement?

2. Apart from 1 above, and granted a Congressional purpose that valuation be prerequisite to non-consensual rate-making in the District, as had been settled by previous decisions of the court below, is that Congressional purpose overturned by the holding of the *Hope* and *Natural Gas Pipeline* cases[1] that the Congress constitutionally may, where it wishes, authorize rate-making without valuation?

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[1] *Federal Power Commission* v. *Hope Natural Gas Co.*, 320 U. S. 591 (1944); *Federal Power Commission* v. *Natural Gas Pipeline Co.*, 315 U. S. 575 (1942).

STATEMENT

1. Historical Background

In creating the Commission in 1913, the Congress empowered it to regulate rates. It was directed to value the property of the utility at current fair value (Par. 7), for the evident purpose of providing a basis for the permissible rate order. But English precedent, adopted for a time in Massachusetts, afforded a simpler alternative, based on incentive rather than litigation, known loosely as the "sliding scale". The Congress accordingly empowered the Commission not only to fix rates unilaterally on a valuation basis, but also to settle by agreement with the utility on any incentive plan that might be "practicable and advantageous to the parties interested" (Par. 18).

Early efforts by the Commission on a valuation basis led to such difficulties that, even by 1924, no solution had been found. So the Commission and the Petitioner, exploring the possibilities of compromise under Par. 18, agreed on a particular formula for a semi-automatic annual redetermination of rates. In essence, this provided for an annual reduction of rates by half the excess of net income over an approved rate of return on an agreed rate base, including among operating costs an agreed provision for depreciation, the remaining half of any excess net income to remain with Petitioner as an incentive to further investment and efficiency of service.

This arrangement, with occasional changes in its component terms by mutual agreement, including successive reductions of the rate of return, remained in effect until 1943, when the present controversy arose. It is undisputed that during this 19-year period rates were steadily reduced, from a level materially above, to a level materially below, the national average, and Petitioner continuously improved its service and credit.

2. The Proceeding in the Commission

In 1943 the Commission instituted an investigation to determine whether it should make "modifications of the basic elements of the existing arrangement" (R. 250). In this investigation the Commission made no effort at a new valuation but at all times asserted, and professed to exercise, a power to change the agreed sliding scale arrangement in any respect, however important, without compliance with regular rate-making requirements (R. 44, 45). This was on the theory that, once given an agreement on any particular formula under Par. 18, the Commission might thereafter impose any other formula, however different, against the opposition of the utility and without satisfaction of regular rate-making requirements.

By such procedure, the Commission entered an order reducing rates by a million dollars a year, as a result of lopping off 25 million dollars from the 106 million dollar rate base and changing each of the other fundamental terms of the formula. A new formula being thus promulgated by unilateral action, the Company at once rejected it in an application for reconsideration (R. 246) and, upon its denial, moved for redress in the courts.

3. Action of the Courts Below

The District Court affirmed the Commission with a brief opinion (R. 262) that does not discuss the major questions, but goes mainly on the ground that the Petitioner "has not withdrawn from the sliding-scale arrangement and is bound thereby" (R. 263).

This conclusion, if puzzling, seems clear in comparison with the situation now existing as a result of the three differing opinions of the three Judges who sat in the Court of Appeals.

On the first of the two questions here presented, Judge Edgerton was content to dismiss Petitioner's contention that an agreed compromise might not be changed by the Commission except through resort to regular rate-making powers, admittedly always available, on the short, though unexplained, ground that "The plain language of Par. 18 answers this argument." (R. 645)

Judge Clark was less categorical. He was impressed by the view that such a result would give the utility a veto over sliding scale changes and would conflict with the reserved power of the Commission under Par. 18 to make "other and further changes". But hesitating to rest his decision on this view, he went on to say that the Commission might reach the same result "under its general powers" (R. 647). From that point of view, it seemed necessary to buttress the first point, though he thought it might at any rate be adhered to now since Petitioner's "time for withdrawal from the 'sliding scale' arrangement has long since past" (R. 648, *sic*), thus implying that utilities in general may veto unilateral sliding scale changes if they do so promptly, and are able to tell when the time for promptness begins. But as a practical guide for the rate-making process, this rule has many cloudy terms, for it is difficult to see how any one could have opposed the Commission's action more vigorously or continuously than Petitioner (R. 10, 17-18), or how any one could have rejected the result more promptly or unequivocally (R. 246). Going back then, perhaps by virtue of these circumstances, to the view that the Petitioner might even "at this late hour" still be entitled to withdraw from the compromise arrangement, Judge Clark recurred to his second ground that "the Commission's general powers are quite sufficient" (R. 648). The rest of his opinion is given to a succession of possible positions on that question, summarized below.

Judge Miller, basing his decision on the history and policy of the sliding scale provision, was emphatic in his conclusion that, while the Commission always retains authority to change rates outside an agreed compromise by virtue of its general regulatory powers, it could not change rates within an agreed compromise unless by consent of the other contracting party (R. 651, 653).

On the second of the two questions here presented, Judge Edgerton felt entitled to disregard the Congressional intention, established not by the express terms of the Act but by its Congressional history and prior decisions of the same court, that current valuation be a condition precedent to non-consensual rate-making in the District. He felt entitled to do this, and indeed required, by the decisions of this Court in the *Hope* and *Natural Gas Pipeline* cases. Forgetful that the question there was the constitutionality of a declared Congressional will for rate-making without valuation, he erroneously thought that "The Supreme Court has decided that a statutory provision for finding 'fair value' does not require use of 'fair value' in fixing rates" (R. 645-6), and thus came to the conclusion that the finding itself, being not destined for use, might be omitted.

Judge Clark, while not explicit on this point, was evidently governed by the same misconception, for as pointed out in the dissent of Judge Miller,

> "... in spite of what seems to be the apparent and logical meaning of paragraphs 6 and 7, and in spite of the prior pronouncements of this Court . . ., the majority of the Court feel themselves bound in this case by the *Natural Gas Pipeline* and *Hope* cases." (R. 655)

Though feeling "bound" by those decisions, Judge Clark moved on to two additional grounds, first suggesting that the 1924 figure (accepted as a compromise rate base in lieu of valuation) plus net subsequent additions at cost was a

compliance with Par. 7, though it requires a valuation of property "at the fair value thereof at the time of said valuation", and next suggesting that the Commission did in fact here "take valuation evidence into account" (R. 650), though the Commission did not purport to make any finding of value or to use the concept of value as a step in its reasoning, but indeed expressly repudiated value as a guide (R. 18-19). In the end, Judge Clark, like Judge Edgerton, thought that matters of procedure were unimportant short of confiscation (R. 645 and 650).

Judge Miller, for his part, saw that this was a misconception of the *Hope* and *Natural Gas Pipeline* cases. They, he said,

> ". . . arose under the Natural Gas Act, which contains no standards except that rates be just and reasonable. There is in that Act no equivalent of paragraphs 6 and 7 of the District statute here under consideration. It does not require the Commission to proceed in any particular manner in determining rates; it contains no mandate as to how a rate base should be established.
>
> ". . . In the presence of definite, specific statutory standards, the principle of the *Pipeline* and *Hope* cases does not apply, and any commission action which does not observe those standards is invalid if it harms, even if it does not confiscate.
>
> ". . . when a Commission proceeds in defiance of its governing statute, its action amounts to unauthorized regulation. Unauthorized regulation is unlawful, if the utility is deprived of its property, even though the deprivation is short of confiscation." (R. 655-6)

As a result, the order of the District Court, and thus of the Commission, was affirmed, though on grounds that leave wholly indeterminable the power of the Commission for the future and discard the will of Congress under a misconception of the doctrine laid down by this Court in the *Hope* and *Natural Gas Pipeline* cases.

SUMMARY OF ARGUMENT

1. The compromise provisions of sliding scale procedure do not authorize unilateral action.

The Congress, in authorizing compromise rate agreements in the District of Columbia as an alternative to the usual statutory procedure by valuation, could not have intended to confer on the Commission a unilateral privilege to change the essential terms of such agreements against the objection of the utility and without compliance with the regular rate-making procedure, for no utility, in such event, would ever compromise. The Commission's action here was an assertion, for the first time, of just such a power. It is important that this question be distinctly decided so as to provide a workable basis for regulation in the future, but the three differing opinions of the Court of Appeals below leave it clouded in serious uncertainties.

2. The will of the Congress can not be disregarded on the ground that it might have done something different.

Valuation is required by the Act as a prerequisite to rate-making in the absence of compromise, though not in terms, yet by legislative history and uniform interpretation. This purpose of the Congress was discarded by a majority of the Court of Appeals on a misapplication of the *Hope* and *Natural Gas Pipeline* decisions that the legislative will is to be sustained, as against Constitutional attack, even without requiring valuation. The implication that Federal doctrine necessitates rejection of the legislative will where it does require valuation threatens to unsettle and confuse the regulatory process on an important matter, not alone in the District, but also in twelve States having statutes in similar form.

ARGUMENT

1. The Compromise Provisions of Sliding Scale Procedure Do Not Authorize Unilateral Action.

There was no reason why the Congress, having given the Commission full powers for rate-making by conventional methods, should, by an elliptic clause in its authorization for compromise agreements, give the Commission an unlimited privilege for rate-making without agreement and without satisfaction of the ordinary rules. On the contrary, there was every reason why the Congress, dealing with a practical situation and trying for a practical remedy, should intend just the opposite, for no sane utility management could be expected to make any compromise arrangement under Par. 18 if by doing so it would surrender all safeguards of regular rate-making practice. It is trite to say that legislation is to be interpreted to advance the remedy, but important to do so when its disregard will paralyze the statutory scheme.

But there may be one step worse, and, if so, it is illustrated here. Worse than paralysis of the statutory scheme may be the impossibility of determining whether such be the case or not. Yet it is under just such uncertainty that the regulatory powers of the Commission must be exercised in the future if the decision below is to remain in effect. Here for the first time was an assertion by the Commission of a special power, an exemption from the rate-making routine, unexpectedly available in the case of every utility that had tried to work out its rate problems on a businesslike basis. Unexpectedly, we say, because the Commission had theretofore uniformly recognized that any sliding scale arrangement might be terminated on reasonable notice by either party.[3] It had been recognized in effect

[3] *Re Washington Gas Light Co.*, 11 P. U. R. (NS) 469, 471, 478 (1935); People's Counsel at the time so recognized: Roberts, *How the "Sliding Scale" Reduces Rates* (1936) 18 P. U. Fort. 11.

by the court below in stressing the consensual nature of any sliding scale arrangement.[3]

It was important for the orderly and efficient operation of the District Government that such a novel assertion be disposed of distinctly by the court below, in terms unequivocally rejecting it, as Petitioner thinks right, or at least unequivocally accepting it, so that the Commission and the industry might thereafter know the basis for their arrangements and proceedings. The court below did neither. The polar difference between Judge Edgerton and Judge Miller, and the indecision of Judge Clark, leave the law indeterminable, though on an important point in the administration of public affairs.

2. The Will of the Congress Can Not Be Disregarded on the Ground That It Might Have Done Something Different.

The constitutional problems implicit in utility rate-making were first recognized in terms of a permissible return on the value of the property employed. That is, no doubt, a difficult and variable concept. Evidence of various kinds is pertinent to its determination. They were catalogued, in time, by this Court in *Smyth* v. *Ames,* 169 U. S. 466 (1898).

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[3] "In operation such a sliding scale plan gradually works towards a rate base valued at cost since additions to the property are recorded at cost; and in periods of continuously rising prices, such as have prevailed since 1935, the plan results in a rate base in each year of less than actual value at that time." *Washington Gas Light Co.* v. *Byrnes,* 78 U. S. App. D. C. 107, 137 F. 2d 547, 549 (1943), aff. *Vinson* v. *Washington Gas Light Co.,* 321 U. S. 489 (1944).

"The principles of the sliding scale were the subject of careful consideration when it was proposed by the People's Counsel and accepted by the utility in 1935. Acceptance by the utility was necessary since the statute, District Code Section 43-306, required that the Commission value the property of a utility at its fair value and the sliding scale arrangement eventuates in the course of time in a cost valuation." *Id.,* at 556.

As a landmark in utility regulation, that decision had a wide influence through the country, and all the more so since that was a period when many States were, for the first time, enacting laws to govern the rate-making process. The statutes of twelve States, either in terms or by interpretation of the local courts, today require a determination of "value" as a pre-requisite to any rate-making order.[4] In a number of these statutes prudent investment is specifically negated as an exclusive test by requiring consideration of current reproduction costs and other elements of value.[5] While the details of the individual statutes are not presently of interest, the recognition of the legislative will in this type of statute presents a matter of general importance.

The Act, while not so in terms, was clearly intended as a statute of this type. Par. 7 requires the Commission to "value the property of every public utility . . . at the fair value thereof at the time of said valuation" and Par. 6 lists the main components of that "fair value", principally original cost and current cost of reproduction. These were not designed as a manual of exercises for the general education of the Commission. The Congress was concerned with doing a practical job in an efficient way. They were intended as rules for the rate-making process, to crystallize in a legislative formula the pronouncements in *Smyth* v. *Ames*. The final form of the Act was expressly chosen, in preference to a more general form, for just this reason. The

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[4]Ala. Code (1940) tit. 48, §52; Ind. Stat. Ann. (Burns, 1933) §54-203; Kans. Gen. Stat. (1935) §66-128; Ky. Rev. Stat. (1942) §278.290; Me. Rev. Stat. (1944) ch. 40, §16; 16 Mich. Stat. Ann. (1937) §22.157; N. M. Stat. Ann. (1941) §72-514; N. Y. Pub. Serv. Law (1939) §§49, 66(16), 114; N. C. Gen. Stat. (1943) §62-124; Ohio Gen. Code (Page, 1946) §614-46; 66 Penn. Stat. (Purdon, 1941) §1151; Wash. Rev. Stat. (Remington, 1933) §10441; see also Esser, *State Laws in Relation to the Hope Natural Gas Decision* (1944) 34 P. U. Fort. 69.

[5]Ala. Code (1940) tit. 48, §319; Ind. Stat. Ann. (Burns, 1933) §54-203; Ky. Rev. Stat. (1942) §278.290; N. M. Stat. Ann. (1941) §72-514; N. C. Gen. Stat. (1943) §62-124.

report of the Board of Commissioners of the District at the time of the enactment of the Act, and of the Senate Committee for the District reporting thereon,[6] explained the function of Par. 6 by reference to *Smyth* v. *Ames*, saying that under it "fair value . . . is 'the basis of all calculations as to the reasonableness of rates' ". When this choice was made on the floor of the Senate, it was made on the statement that Par. 6 related to the "question of fixing rates" and "the question of the determination of the rates that are to be charged".[7]

This unmistakable legislative will was honored through all time, both by the Commission, which set about to find "fair value" in its first rate case[8] (including as one of the elements current reproduction costs[9]), and by the Court of Appeals below.[10] It was, in due course, conceded as the

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[6]Sen. Rep. No. 300, 62nd Cong., 2d Sess. (1912) 2.

[7]48 Cong. Rec. 3019-20 (1912).

[8]*Re Potomac Electric Power Co.*, P. U. R. 1917D 563, 702.

[9]*Id.*, at 692-3.

[10]"The principal object of valuation, of course, is to provide a rate base, and the statute clearly contemplates that the commission shall ascertain the value as of 'the time of said valuation,' and not as of some anterior date." *Potomac Electric Power Co.* v. *Public Utilities Commission*, 51 App. D. C. 77, 276 Fed. 327, 329 (1921), app. dism., *Keller* v. *Potomac Electric Power Co.*, 261 U. S. 428 (1923).

"We are of the view, therefore, that the present cost of reproduction is one of the necessary elements for consideration, along with other relevant facts, in fixing the fair and reasonable value of the property. The law deals with existing conditions and not with abstract theories." *Id.*, at 330.

law[11] and finally confirmed by this Court.[12]

So, when this case reached the Court of Appeals below, it was settled law that the Act, like the acts of a number of the States, defined a formula for rate-making in terms of a return on value to be determined by consideration of numerous elements including current reproduction costs.

It was just this Congressional purpose that the Court below discarded on the basis of its misconception of this Court's decision in the *Hope* case. The Natural Gas Act, in issue in that case, provided, *simpliciter*, that all rates should be "just and reasonable"[13] and that the Commission might determine the "just and reasonable" rate.[14] As the Court said:

> "Congress . . . has provided no formula by which the 'just and reasonable' rate is to be determined." (320 U. S. at 600)

So the Court held that:

> "Under the statutory standard of 'just and reasonable', it is the result reached not the method employed which is controlling . . . If the total effect of the rate order cannot be said to be unjust and unreasonable,

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[11]"The company appealed to the Supreme Court of the District, which held that this method of computing reproduction cost was unlawful, being in violation of the express terms of the statute, which requires the value to be determined as of the date of the valuation. The commission's valuation was accordingly set aside, and, it is now conceded that this ruling was correct. Potomac Electric Power Co. v. Commission, 51 App. D. C. 77, 276 F. 327." *Public Utilities Commission* v. *Capitol Traction Co.*, 57 App. D. C. 85, 17 F. 2d 673, 674 (1927).

[12]"For the purpose of its functions, the Commission is directed to value 'the property of every public utility in the District of Columbia actually used and useful for the convenience of the public at the fair value thereof at the time of said valuation.' " *Vinson* v. *Washington Gas Light Co.*, 321 U. S. 489, 491 (1944).

[13]Section 4(a), 15 U. S. C., §717c.

[14]Section 5(a), 15 U. S. C., §717d.

judicial inquiry under the Act is at an end." (*id.*, at 602)

All that means is that the Congress constitutionally may forego a valuation formula, not by any means that the courts constitutionally may disregard a valuation formula that the Congress has prescribed. This is emphasized in the related cases:

> *"The Constitution* does not bind rate-making bodies to the service of any single formula or combination of formulas. Agencies to whom this legislative power has been delegated are free, *within the ambit of their statutory authority,* to make the pragmatic adjustments which may be called for by particular circumstances. Once a fair hearing has been given, *proper findings made and other statutory requirements satisfied,* the courts cannot intervene . . ." (*Federal Power Commission* v. *National Gas Pipeline Co.,* 315 U. S. at 586; italics supplied)

> "Where Congress, as here, fails to provide a formula for the Commission to follow, courts are not warranted in rejecting the one which the Commission employs unless it plainly contravenes the statutory scheme of regulation. *If Congress had prescribed a formula it would be the duty of the Commission to follow it.* (*Colorado Interstate Gas Co.* v. *Federal Power Commission,* 324 U. S. 581, 589 (1945); italics supplied)

A number of State tribunals had held that the enlargement of Constitutional horizons made by these decisions of this Court did not change the legislative intention embodied in their several statutes.[15]

The decision of the Court of Appeals below, as an au-

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[15] *Peoples Natural Gas Co.* v. *Pennsylvania Public Utility Commission,* 153 Pa. Super. 475, 34 A. 2d 375, 382 (1943); *Northern States Power Co.,* v. *P. S. C.,* 73 N. D. 211, 13 N. W. 2d 779 (1944); *The East Ohio Gas Co.* v. *City of Cleveland,* 56 P. U. R. (NS) 73, 79 (1944); *Re The Montana Power Co.,* 56 P. U. R. (NS) 193, 216-7

thoritative Federal tribunal purporting to apply Federal doctrine proclaimed by this Court, threatens to unsettle and confuse the regulatory situation in all these States and in the others having similar statutes, by its implication that some supervening Federal doctrine justifies disregard of the legislative will. This result is, of course, in conflict with the real doctrine of the *Hope* and *Natural Gas Pipeline* decisions. They were concerned to enforce, not to frustrate, the legislative will.

The dispensation so given by the Court of Appeals from the performance of the administrative function enjoined by statute is aggravated by a further circumstance. Under an "end result" doctrine the Court of Appeals felt authorized to say, on administrative findings other than those prescribed by statute, that the result may be deemed reasonable just as if the prescribed findings had been made. This transgresses the line of division between administrative function and judicial review. If an administrative order is not valid on the grounds on which it was rested by the administrative agency, it can not be validated on other factual grounds, not found by the commission or relied on by it (*Securities and Exchange Commission* v. *Chenery Corp.*, 318 U. S. 80, 1943). To say so is to assume what the Commission would have done had it done something other than what it did and thus to substitute the initial judgment of the court for that of the chosen agency, on a judgment matter requiring an appraisal of specialized and complicated facts.

The decision of the Court of Appeals below is, therefore, a decision of a Federal question in conflict with applicable decisions of this Court. It is a misapplication of this Court's decisions to a different type of statute. The conflict is of a

(1944); *City of Long Branch* v. *Monmouth Consolidated Water Co.*, 57 P. U. R. (NS) 104, 111 (1945); and compare *Utah Power and Light Co.* v. *P. S. C.*, 107 Utah 155, 152 P. 2d 542, 553-4 (1944).

particularly serious sort, since it sets aside a legislative purpose and undermines the administrative process. It was not for the court below to substitute its notions of policy for those of the Congress or to dispense with administrative action stipulated by the Congress. These errors were in a matter of general concern, both as to geographical distribution, and as to intrinsic nature and as to frequency of occurrence. For the first, this type of statute exists not in the District alone, but also in a quarter of all the States. For the second, rate regulation is of interest to the whole economy. For the last, the problems of rate regulation recur persistently, since the conditions of the enterprise are in constant change. Their intricacy is such as to require much time and effort for their appraisal. It is, therefore, of particular concern for the orderly operation of the Government and business that the pattern of review be clearly established, and thus be known at the outset of regulatory action rather than discovered after years of exploratory litigation. The decision of the majority of the Judges in the court below may well lead to confusion and delay through wide areas of this important field. These evils will be dispelled by a pronouncement from this Court.

CONCLUSION

We respectfully submit that a writ of certiorari should be granted.

Dated February 14, 1947.

BOWEN & KELLY
929 E Street, N. W.
Washington 4, D. C.

S. RUSSELL BOWEN

HUNTON, WILLIAMS, ANDERSON, GAY & MOORE
1003 Electric Building
Richmond 12, Virginia

T. JUSTIN MOORE
GEORGE D. GIBSON
JOHN W. RIELY
Attorneys for Potomac Electric Power Company

APPENDIX

Excerpts from the Law Creating the Public Utilities Commission of the District of Columbia.

Par. 2. That every public utility doing business within the District of Columbia is required to furnish service and facilities reasonably safe and adequate and in all respects just and reasonable. The charge made by any such public utility for any facility or services furnished, or rendered, or to be furnished or rendered, shall be reasonable, just, and nondiscriminatory. Every unjust or unreasonable or discriminatory charge for such facility or service is prohibited and is hereby declared unlawful. Every public utility is hereby required to obey the lawful orders of the commission created by this section.

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Par. 6. That the commission shall ascertain, as soon and as nearly as practicable, the amount of money expended in the construction and equipment of every public utility, including the amount of money expended to procure any right of way; also the amount of money it would require to secure the right of way, reconstruct any roadbed, track, depots, cars, conduits, subways, poles, wires, switchboards, exchanges, offices, works, storage plants, power plants, machinery, and any other property or instrument not included in the foregoing enumeration used in or useful to the business of such public utility, and to replace all the physical properties belonging to the public utility. It shall ascertain the outstanding stock, bonds, debentures, and indebtedness, and the amount, respectively, thereof, the date when isued, to whom issued, to whom sold, the price paid in cash, property, or labor therefor, what disposition was made of the proceeds, by whom the indebtedness is held, so far as ascertainable, the amount purporting to be due thereon, the floating indebtedness of the public utility, the credits due the public utility, other property on hand belonging to it, the judicial or other sales of said public utility, its property or franchises, and the amounts purporting to have been paid, and in what manner paid therefor, and the taxes paid thereon. The commission shall also

ascertain in detail the gross and net income of the public utility from all sources, the amounts paid for salaries to officers and the wages paid to its employees, and the maximum hours of continuous service required of each class. Whenever the information required by this paragraph is obtained it shall be printed in the annual report of the commission. In making such investigation the commission may avail itself of any information in possession of any department of the Government of the United States or of the Commissioners of the District of Columbia.

Par. 7. That the commission shall value the property of every public utility within the District of Columbia actually used and useful for the convenience of the public at the fair value thereof at the time of said valuation.

Par. 8. That before final determination of such value the commission shall, after notice of not less than thirty days to the public utility, hold a public hearing as to such valuation in the manner hereinafter provided for a hearing, which provisions, so far as applicable, shall apply to such hearing. The commission shall, within ten days after such valuation is determined, serve a statement thereof upon the public utility interested, and shall file a like statement with the District Committees in Congress.

Par. 9. That the commission may at any time, on its own initiative, make a revaluation of the property of any public utility.

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Par. 18. That nothing in this section shall be taken to prohibit a public utility, with the consent of the commission, from providing a sliding scale of rates and dividends according to what is commonly known as the Boston sliding scale, or other financial device that may be practicable and advantageous to the parties interested. No such arrangement or device shall be lawful until it shall be found by the commission, after investigation, to be reasonable and just and not inconsistent with the purposes of this section. Such arrangement shall be under the supervision and regulation of the commission. The commission shall ascertain, deter-

mine, and order such rates, charges, and regulations, and the duration thereof, as may be necessary to give effect to such arrangement, but the right and power to make such other and further changes in rates, charges, and regulations as the commission may ascertain and determine to be necessary and reasonable, and the right to alter or amend all orders relative thereto, is reserved and vested in the commission notwithstanding any such arrangement and mutual agreement.

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Par. 65. The District Court of the United States for the District of Columbia shall have jurisdiction to hear and determine any appeal from an order or decision of the commission. Any public utility, or any other person or corporation affected by any final order or decision of the commission, other than an order fixing or determining the value of the property of a public utility in a proceeding solely for that purpose, may, within sixty days after final action by the commission upon the petition for reconsideration, file with the clerk of the District Court of the United States for the District of Columbia, a petition of appeal setting forth the reasons for such appeal and the relief sought; at the same time such appellant shall file with the commission notice in writing of the appeal together with a copy of the petition. Within twenty days of the receipt of such notice of appeal the commission shall file with the clerk of the said court the record, including a transcript of all proceedings had and testimony taken before the commission, duly certified, upon which the said order or decision of the commission was based, together with a statement of its findings of fact and conclusions upon the said record, and a copy of the application for reconsideration and the orders entered thereon: *Provided,* That the parties, with the consent and approval of the commission, may stipulate in writing that only certain portions of the record be transcribed and transmitted. Within this period the commission or any other interested party shall answer, demur, or otherwise move or plead. Thereupon the appeal shall be at issue and ready for hearing. All such proceedings shall have precedence over any civil cause of a different nature

pending in said court, and the District Court of the United States for the District of Columbia, shall always be deemed open for the hearing thereof. Any such appeal shall be heard upon the record before the commission, and no new or additional evidence shall be received by the said court. The said court, or any justice or justices thereof, before whom any such appeal shall be heard, may require and direct the commission to receive additional evidence upon any subject related to the issues on said appeal concerning which evidence was improperly excluded in the hearing before the commission or upon which the record may contain no substantial evidence. Upon receipt of such requirement and direction the commission shall receive such evidence and without unreasonable delay shall transmit to the said court the findings of fact made thereon by the commission and the conclusions of the commission upon the said facts.

Upon the conclusion of its hearing of any such appeal the court shall either dismiss the said appeal and affirm the order or decision of the commission or sustain the appeal and vacate the commission's order or decision. In either event the court shall accompany its order by a statement of its reasons for its action, and in the case of the vacation of an order or decision of the commission the statement shall relate the particulars in and the extent to which such order or decision was defective.

Any party, including said commission, may appeal from the order or decree of said court to the Court of Appeals of the District of Columbia, which shall thereupon have and take jurisdiction in every such appeal. Thereafter the Supreme Court of the United States may, upon a petition for certiorari granted in its discretion, review the said case.

Said commission shall not, nor shall any of its members, officers, agents, or employees, be taxed with any costs, nor shall they or any of them be required to give any supersedeas bond or security for costs or damages on any appeal whatsoever. Said commission, or any of its members, officers, agents, or employees, shall not be liable to suit or action or for any judgment or decree for any damages, loss, or injury claimed by any public utility or person, nor re-

quired in any case to make any deposit for costs or pay for any service to the clerks of any court or to the marshal of the United States.

Par. 66. In the determination of any appeal from an order or decision of the commission the review by the court shall be limited to questions of law, including constitutional questions; and the findings of fact by the commission shall be conclusive unless it shall appear that such findings of the commission are unreasonable, arbitrary or capricious.